



## Legislative Fiscal Bureau

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August 8, 2017

TO: Members  
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: August 2017 Special Session Assembly Bill 1: Foxconn/Fiserv Legislation

On July 27, 2017, Governor Walker and Mark Hogan, Secretary and CEO of the Wisconsin Economic Development Corporation (WEDC), entered into a memorandum of understanding (MOU) with Terry T. M. Gou, Chairman and CEO of Hon Hai Precision Industry Co., Ltd. (Foxconn) and Louis K. Woo, Special Assistant to Mr. Gou. Under the MOU, Foxconn agrees to invest \$10 billion to construct, over six years, a facility in Wisconsin and create up to 13,000 jobs, with a reported average salary of \$53,875 over a period of up to six years. The state's agreement, under the MOU, among other things, is to provide up to \$3 billion in an economic package which would include refundable tax credits and a construction sales tax exemption for Foxconn.

On July 28, 2017, the Governor issued Executive Order #250, calling for a special session of the Legislature to address legislation relating to the promotion of economic development and job retention. That legislation has been drafted as LRB 4050/1. The bill would address the state's agreement under the MOU and would also add a new component to the enterprise zone credit program, which would provide up to \$10 million in tax benefits to Fiserv, Inc.

On August 1, 2017, the bill was introduced by the Committee on Assembly Organization as August 2017 Special Session Assembly Bill 1 and referred to the Assembly Committee on Jobs and the Economy. On August 3, 2017, that Committee held a public hearing on the bill.

This memorandum summarizes the provisions of SS AB 1 (the bill) and provides information regarding the fiscal effects of the legislation.

## SUMMARY OF BILL

### ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE

#### *Designation of Zones and Certification of Businesses for Tax Benefits*

Under the bill, WEDC would be permitted to designate not more than one electronics and information technology manufacturing (EITM) zone. In determining whether to designate an area as a zone, WEDC would have to consider: (a) indicators of the area's economic need, which may include data regarding household income, average wages, the condition of property, housing values, population decline, job losses, infrastructure and energy support, the rate of business development, and the existing resources available to the area; and (b) the effect of designation on other initiatives and programs to promote economic and community development in the area, including job retention, job creation, job training, and creating high-paying jobs.

WEDC would have to specify whether an EITM zone is located in a tier I county or municipality or a tier II county or municipality. WEDC would have to, to the extent possible, give preference to the greatest economic need. A zone designation could remain in effect for no more than 15 years.

WEDC could certify a business that begins operations in an EITM zone for the new EITM zone tax credits described below. As drafted under the bill, it is possible that WEDC could certify more than one business as eligible to receive EITM zone tax credits. However, the aggregate amount of both EITM payroll and capital expenditure credits that WEDC could certify would be subject to the limits described below. WEDC would have to revoke a certification if the business does any of the following: (a) supplies false or misleading information to obtain tax benefits; (b) leaves the EITM zone to conduct substantially the same business outside the zone; or (c) ceases operations in the zone and does not renew operation of the business or a similar business in the zone within 12 months.

WEDC could require a business to repay any tax benefits the business claims for a year in which it failed to maintain employment levels or a significant capital investment in property required by an agreement between the business and WEDC. [Regarding credit repayments, current law specifies that WEDC may not certify a person to receive certain tax benefits unless it enters into an agreement with the person that requires the person to repay the tax benefits if, within five years after being certified to receive them, the person ceases to conduct the relevant economic activity in this state and commences substantially the same economic activity outside this state. However, the current definition of "tax benefits" under this provision does not include the existing enterprise zone credits and the bill would not include the new EITM zone credits. The administration has requested that the bill be amended to include references to both of these tax credit programs.]

WEDC would have to determine the maximum amount of the tax benefits that a certified business may claim and notify the Department of Revenue (DOR) of this amount. WEDC would also have to annually verify the information submitted to it regarding the EITM zone tax credit.

WEDC would have to adopt policies and procedures defining a tier I county or municipality and a tier II county or municipality, and could consider all of the following information when establishing those definitions: (a) unemployment rate; (b) percentage of families with incomes below the federal poverty line; (c) median family income; (d) median per capita income; and (e) other significant or irregular indicators of economic distress, such as a natural disaster or mass layoff.

### ***EITM Zone Payroll Tax Credit***

"State payroll" would mean the amount of payroll apportioned to this state, as determined under the old corporate apportionment statutes. "Zone payroll" would mean the amount of state payroll that is attributable to wages paid to full-time employees for services that are performed in the zone or that are performed outside the zone, but within the state, and for the benefit of the operations within the zone, as determined by WEDC. "Zone payroll" would not include the amount of wages paid to any full-time employees that exceeds \$100,000.

As under the enterprise zone program, "full-time employee" would mean an individual who is employed in a regular, nonseasonal job and who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays. However, WEDC could grant exceptions to the requirement that a full-time employee means an individual who, as a condition of employment, is required to work at least 2,080 hours per year if: (a) the individual is employed in a job for which the annual pay is more than the amount determined by multiplying 2,080 by 150% of the federal minimum wage (\$22,620); and (b) the individual is offered retirement, health, and other benefits that are equivalent to the retirement, health, and other benefits offered to an individual who is required to work at least 2,080 hours per year.

A claimant could claim as a refundable income or franchise tax credit an amount calculated as follows:

a. Determine the zone payroll for the taxable year for full-time employees whose annual wages are greater than the amount determined by multiplying 2,080 by 150% of the federal minimum wage (\$22,620) in a tier I county or municipality or greater than \$30,000 in a tier II county or municipality.

b. Multiply the amount determined under "a" by 17%.

WEDC could not issue certifications to claim payroll tax credits under these provisions that total more than \$1.50 billion.

### ***Supplemental Credit for Capital Expenditures***

In addition to the payroll tax credit, if WEDC determines that a certified business makes a significant capital expenditure in the EITM zone, it could certify the business to receive additional tax benefits in an amount to be determined by WEDC, but not exceeding 15% of the business's capital expenditures in the EITM zone in the taxable year. WEDC would have to, in a manner it determines, allocate the tax benefits a business is certified to receive under this

provision over a period of seven years. WEDC would have to adopt policies and procedures defining "significant capital expenditure."

WEDC could not issue certifications to claim capital expenditure tax credits under these provisions that total more than \$1.35 billion.

### ***Other Provisions***

Partnerships, limited liability companies (LLCs), and tax-option corporations could not claim the credits, but the eligibility for, and the amount of, the credit would be based on their payment of amounts described above. A partnership, LLC, or tax-option corporation would have to compute the amount of credit that each of its partners, members, or shareholders may claim and provide that information to each of them. Partners, members of LLCs, and shareholders of tax-option corporations could claim the credit in proportion to their ownership interests.

No credit would be allowed unless the claimant's return includes a copy of the certification for tax benefits. DOR would have full power to administer the credits and could take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest and penalties would apply to the new credits. Current law provisions regarding timely claims of research credits would also apply to the new credits.

As noted, the new credits would be refundable. If the allowable amount of a credit claim exceeds the income or franchise taxes otherwise due on the claimant's income, the amount of the claim that is not used to offset those taxes would be certified by DOR to the Department of Administration (DOA) for payment by check, share draft, or other draft drawn from a new GPR sum sufficient appropriation for the credit. No interest would be paid on amounts certified for refund.

[Bill Sections: 6, 22, 24 thru 28, 30 thru 32, and 49]

### **SALES TAX EXEMPTION**

The bill would create a state and local sales and use tax exemption for building materials, supplies, and equipment and taxable landscaping and lawn maintenance services sold to (and the storage, use, or other consumption of the same property and services by) owners, lessees, contractors, subcontractors, or builders if that property or service is acquired solely for or used solely in, the construction or development of facilities located in an EITM zone and if the capital expenditures for the construction or development of such facilities may be claimed as an EITM credit, as certified by WEDC. The exemption would first apply to purchases made after WEDC enters into a contract with a business to locate in an EITM zone.

[Bill Sections: 34 and 62]

## **ENTERPRISE ZONE PROGRAM**

The enterprise zone program provides refundable tax credits that can be claimed against the individual income tax and the corporate income/franchise tax for eligible expenses for increased employment, retaining employees, employee training, capital investment, and purchases from Wisconsin vendors. WEDC is responsible for designating enterprise zones, certifying taxpayers, allocating and verifying tax credits, and performing other general administrative functions related to the enterprise zone program. WEDC is authorized to designate up to 30 areas in this state as enterprise zones and is required to designate as zones at least three areas comprised of political subdivisions with populations of fewer than 5,000, and two areas comprised of political subdivisions with populations between 5,000 and 30,000.

### ***Increase the Number of Enterprise Zones***

The bill would allow WEDC to designate up to 35 zones, instead of 30 under current law.

The bill would also specify that if WEDC revokes all certifications for tax benefits within a designated enterprise zone, it may cancel the designation of that enterprise zone and then designate a new enterprise zone subject to the statutory limits. It would also allow WEDC to designate an additional zone if an existing enterprise zone designation expires. [These provisions were included in the Governor's budget bill.]

[Bill Sections: 50 thru 53 and 55]

### ***Fiserv***

The bill would create a new refundable enterprise zone credit for no more than one financial services technology business that: (a) after completing a competitive corporate relocation process, retains its corporate headquarters in this state and retains at least 93% of its full-time employees in this state who were identified as being full-time employees of the business in the base year, as determined by WEDC; and (b) maintained average zone payroll for the taxable year equal to or greater than the base year.

The credit would be equal to the percentage, as determined by WEDC, of the claimant's zone payroll paid in the 12 months prior to the certification date to the claimant's full-time employees in the enterprise zone whose annual wages are greater than the amount determined by multiplying 2,080 by 150% of the federal minimum wage (\$22,620) in a tier I county or municipality or greater than \$30,000 in a tier II county or municipality. The amount that the claimant could claim for a taxable year could not exceed \$2 million. A claimant could claim the credit for no more than five consecutive taxable years.

The administration indicates that this new credit is intended to allow WEDC to provide assistance to Fiserv, Inc., which is headquartered in Brookfield. This component of the bill is not related to the Foxconn project.

[Bill Sections: 23, 29, and 54]

## **DISREGARDED ENTITIES**

Under the bill, with regard to a single-owner entity that is disregarded as a separate entity under the Internal Revenue Code, any notice that DOR sends to the owner or to the entity would be considered a notice sent to both and both would be liable for any amounts due as specified in the notice. This would apply to all laws administered by DOR. The new provision is also referenced in Chapters 180 (business corporations) and 183 (LLCs). [The Governor's budget bill included similar provisions but did not include the cross references in Chapter 180 or 183.]

[Bill Sections: 33, 37, and 38]

## **PUBLIC SERVICE COMMISSION**

### ***Certificates of Authority and Certificates of Public Convenience and Necessity***

The bill would exclude public utility projects within an EITM zone from the requirements to obtain a certificate of authority from the Public Service Commission (PSC), and would exclude public utility projects consisting of high-voltage transmission line relocations within an EITM zone from the requirements to obtain a certificate of public convenience and necessity from the PSC.

[Bill Sections: 46 and 47]

### ***Market-Based Public Utility Rates***

The bill would modify current law provisions regarding public utility market-based rates to require an electric public utility providing service to an EITM zone to file with the PSC, no later than January 1, 2020, tariffs that include market-based pricing and options that allow a new retail customer within the EITM zone to receive market benefits and take market risks for some or all of the customer's purchases of capacity and energy. Subject to maximum capacity or energy purchase limits established by the PSC, the bill specifies that the tariffs include the following requirements: (a) the electric public utility shall verify that the customer is eligible for an EITM zone credit; (b) the customer shall annually nominate the amount of capacity and energy subject to the market-based tariff; (c) the customer shall provide not less than 12 months' notice to terminate service under the market-based tariff; and (d) the term of the market-based tariff may not be less than 10 years. In addition, the bill specifies that the tariff require the customer to pay the difference, if any, between the otherwise applicable retail rate and the market-based tariff if the customer supplies false or misleading information regarding its applicability for the market-based tariff, leaves the EITM zone to conduct substantially the same business outside the zone, or ceases operations in the EITM zone and does not renew operation of the business or a similar business within the zone within 12 months. The PSC would be required to approve market-based rates under the preceding provisions and establish maximum capacity or energy purchase limits for purposes of the tariffs, as noted above.

[Bill Sections: 39 thru 45]

## NATURAL RESOURCES

### *Environmental Impact Statements*

The bill would specify that any permit or approval issued for a new manufacturing facility within an EITM zone would not be considered a major action for the purpose of the environmental impact statement requirement under s. 1.11(2)(c) of the statutes.

Under current law, all state agencies are required to prepare environmental impact statements (EIS) for every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the human environment. Federal government agencies also may conduct environmental reviews, up to and including an EIS, for actions affecting areas of federal jurisdiction, such as interstate navigable waters. The bill would not affect federal requirements.

[Bill Section: 49]

### *Water Diversion from Great Lakes Basin*

The bill would specify that, when a person in a straddling community applies to the Department of Natural Resources (DNR) to divert (transfer) water from the Great Lakes basin into a watershed outside the Great Lakes basin, the proposed diversion would be exempt from the requirement to be consistent with an approved water supply service area plan that covers the public water supply system if the proposal is to provide water to a straddling community that includes an EITM zone.

Currently, a straddling community is any city, village, or town that, based on its boundary existing as of the Great Lakes Compact's effective date, is partly within the Great Lakes basin or partly within the watersheds of two of the Great Lakes and that is wholly within any county that lies partly or completely within the Great Lakes basin. The Compact was entered into by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the Commonwealth of Pennsylvania, and the Canadian Provinces of Ontario and Quebec to regulate the withdrawal of water from the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivieres, Quebec. A public water supply is water distributed to the public through a physically connected system of treatment, storage, and distribution facilities that serve a group of largely residential customers and that may also serve industrial, commercial, and other institutional customers. The operator of a public water supply that serves a population of 10,000 or more that withdraws water from the waters of the state is required to have a water supply service area plan approved by DNR by December 31, 2025. The plan is required to include information about: (a) the area served, current sources of water, future demand, and population projections; (b) options for supplying water, including a cost-effectiveness analysis of regional and individual water supply and water conservation alternatives; (c) an assessment the environmental and economic impacts of carrying out the plan; (d) a planning period not to exceed 20 years; and (e) an opportunity for public review and comment on the proposed plan.

[Bill Section: 56]

### ***Wetlands Permitting Exemption***

The bill would provide an exemption from DNR permitting requirements related to discharging dredged or fill material into a wetland for the construction, access, or operation of a new manufacturing facility in an EITM zone. In addition, the bill would require, as a condition of the exemption, that the exempted party compensate for adverse impacts to functional values of wetlands, at a ratio of two acres per each acre impacted, in one of the following manners, subject to DNR administrative rules: (a) purchase credits from a wetland mitigation bank located in Wisconsin; (b) participate in the Wisconsin Wetland Conservation Trust (WWCT) in-lieu fee (ILF) program; (c) complete wetland mitigation in Wisconsin; or (d) participate in the escrow program, to deposit funds for future wetland mitigation in Wisconsin. (The WWCT ILF program sells WWCT credits to permittees, which are then used to fund wetland restoration projects in Wisconsin. Since federal approval of the WWCT ILF program, the escrow program has been discontinued.)

The bill also specifies that DNR would waive its water quality certification related to discharges into wetlands described in the previous paragraph. Under federal law, discharges into "navigable waters" must receive a permit from the U.S. Army Corps of Engineers, subject to Environmental Protection Agency rules, after a state agency provides water quality certification of a discharge. Under this provision, the state would waive its water quality certification, but the discharges would still be subject to federal approval, as long as they were into federal "navigable waters." Federal law defines "navigable waters" as "waters of the United States," which is generally interpreted by the courts to exclude non-navigable, isolated, intrastate waters (nonfederal wetlands).

[Bill Sections: 57 thru 59]

### ***Navigable Streams***

The bill would provide an exemption from DNR permitting requirements related to the deposit of material or placement of a structure upon the bed of any navigable stream beyond where a bulkhead line has been established, or where no bulkhead line has been established, for a deposit or structure relating to the construction, access, or operation of a new manufacturing facility in an EITM zone. The exemption would be subject to the requirements that such activities do not interfere with the riparian rights of other riparian owners, and are not located in an area of special natural resource interest (ASNRI). ASNRI is established by s. 30.01(1am) of the statutes and include, among others: (a) state natural areas; (b) trout streams and outstanding or exceptional resource waters; and (c) unique or significant wetlands, including any body of water in a wetland along Lake Michigan or Lake Superior that DNR has determined as an ecologically significant coastal wetland. ASNRI is required to be displayed on a map on DNR's website, and can be viewed with the Department's Surface Water Data Viewer.

Further, if DNR were to investigate the proposed site and determine, due to site-specific conditions, that an otherwise exempt activity would result in environmental pollution or would have significant or material impacts on public rights or those of riparian owners, DNR could require the person engaged in the activity to seek a permit.

[Bill Section: 9]

### ***Bridges and Culverts***

The bill would provide an exemption from DNR permitting requirements related to construction, placement, or maintenance of bridges or culverts in, on, or over navigable waters if such structures are required for the construction, access, or operation of a new manufacturing facility in the portion of a navigable stream in an EITM zone. However, the bill would maintain current law provisions authorizing DNR to require a person exempt from these permitting requirements to apply for a permit if DNR has conducted an investigation and determined that conditions specific to the site require restrictions in order to prevent: (a) significant adverse impacts to the public rights and interest; (b) environmental pollution; or (c) material injury to the riparian rights of any riparian owner.

[Bill Sections: 10 and 11]

### ***Enlargement of Waterways and Bank Protection***

The bill would provide an exemption from DNR permitting requirements related to the following activities that may affect a portion of a navigable stream and that are required for the construction, access, or operation of a new manufacturing facility in an EITM zone: (a) construction, dredging, or enlargement of an artificial water body that connects with an existing navigable waterway, or is within 500 feet of the ordinary high-water mark of an existing navigable waterway; and (b) grading or removal of topsoil from the bank of a navigable waterway where the area exposed would exceed 10,000 square feet.

[Bill Section: 12]

### ***Changing of Stream Courses***

The bill would provide an exemption from DNR permitting requirements related to straightening or changing the course of navigable streams for activities related to the construction, access, or operation of a new manufacturing facility in an EITM zone.

[Bill Sections: 13 and 14]

## **TIF DISTRICT IN AN ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE**

The bill would require that a tax incremental financing (TIF) district that is created within an EITM zone be an industrial site or mixed-use development. Further, it would exempt TIF districts within an EITM zone from the current law requirement that the equalized value of taxable property of that TIF district plus the value increment of all existing TIF districts may not exceed 12% of the total equalized value of taxable property within the city or village. In addition, it would specify that the equalized value of taxable property of a TIF district within an EITM zone does not count in the calculation of the 12% limit. For TIF districts within an EITM zone, the bill would increase the allowable life of a district and the period during which DOR may allocate positive tax increments from 20 years to 30 years. All other current law provisions related to TIF districts would continue

to apply.

The bill would amend the current law definition of "project costs" to include expenditures or monetary obligations associated with public works or improvements within TIF districts located within an EITM zone. Further, the bill would specify that the city or village creating a TIF district within an EITM zone may incur project costs for any territory that is located in the same county as the district if the expenditure benefits the district.

Further, if the resolution creating a TIF district within an EITM zone is adopted between January 1 and December 1, the creation date would be either of the following dates, as specified in the resolution: (a) January 1 of the year in which the resolution is adopted; or (b) January 1 of the following year. The bill would specify that if a resolution is adopted between December 2 and December 31, the creation date will be January 1 of the following year.

The bill would specify that the city or village clerk's submission of the reporting forms required by the Department of Revenue must be complete and submitted either: (a) on or before December 31 of the year the creating resolution is adopted if the resolution is adopted between January 1 and December 1 and the district's creation date is January 1 of the year in which the resolution is adopted; or (b) on or after the following April 1 and before the following December 1 of the year in which the resolution is adopted if the resolution is adopted between January 1 and December 1 and the district's creation date is January 1 of the following year, or the resolution is adopted between December 2 and December 31.

[Bill Sections: 19 thru 21]

## **ACQUISITION OF WATER AND SEWER SYSTEMS AND WASTEWATER TREATMENT FACILITIES BIDS ("DESIGN-BUILD CONSTRUCTION")**

The bill would specify that a city or village may contract for the acquisition of any element of water and sewer systems, or wastewater treatment facilities without submitting the contract for bid to the lowest responsible bidder under the current law competitive bidding requirements for most public works projects if the city or village invites developers to submit proposals to provide a completed project and evaluates proposals according to site, cost, design, and the developers' experience in other similar projects. Under current law, a city or village has a similar exemption from the competitive bidding requirements for public works projects for the acquisition of any element of a recycling or resource recovery facility.

[Bill Sections: 15 thru 18]

## **DEPARTMENT OF ADMINISTRATION**

### ***Grants to Local Governments***

The bill would authorize the Department of Administration (DOA) to make one or more grants to local governmental units for costs associated with development occurring in an EITM zone, including costs related to infrastructure and public safety. Under the bill, DOA may require a

local governmental unit to match a grant in whole or in part. The bill would create a continuing GPR appropriation under DOA with funding of \$10,000,000 GPR in 2017-18 for making such grants to local governmental units, effective on the day after publication of the bill or on the second day after publication of the 2017-19 biennial budget act, whichever is later. Under a continuing appropriation, the unencumbered balance of the appropriation that remains at the end of a fiscal year is retained and available to be expended from the appropriation in the following fiscal year. As such, if grants from the appropriation created under the bill totaled less than \$10.0 million GPR in 2017-18, remaining expenditure authority would be available for grants in 2018-19 and later years.

The Secretary of DOA may contract with a local governmental unit to implement grants, any match requirement, and the moral obligation pledge (described below). Although not defined in the bill, it was the administration's intent to define a "local governmental unit" as a town, village, city, or county for the purposes of the grants to local governments and the moral obligation pledge for local governmental obligations.

[Bill Sections: 2, 3, 5, and 63]

#### ***Moral Obligation Pledge for Local Governmental Obligations***

The bill specifies that, recognizing its moral obligation to do so, the Legislature expresses its expectation and aspiration that, if ever called upon to do so, it would make an appropriation to pay up to 40% of the principal and interest of a local governmental unit's obligations, if all of the following apply: (a) the local governmental unit's obligation is issued to finance costs related to development occurring in or for the benefit of an EITM zone; and (b) the DOA Secretary approves the local governmental unit's obligation before it is issued.

[Bill Section: 2]

#### ***Economic Development Liaison***

The bill would provide \$183,500 GPR in 2017-18 and \$177,500 GPR in 2018-19 and 1.0 unclassified GPR position annually to DOA's supervision and management general program operations appropriation for economic development liaison activities under an agreement with the Wisconsin Economic Development Corporation. The administration indicates that the position would serve as the state's primary point of contact for any matters regarding Foxconn. The bill would specify that the economic development liaison position would be assigned to executive salary group 3, for which an annual salary ranges between \$70,429 and \$116,210 (as specified in the current state compensation plan). The position would be appointed by the Secretary of DOA.

[Bill Sections: 1, 8, 48, and 61]

### **I-94 NORTH-SOUTH CORRIDOR PROJECT**

The bill would authorize \$252,400,000 in general fund-supported, general obligation bonds, which may be used for the I-94 North-South corridor project in the southeast Wisconsin freeway

megaprojects program. The bill would create a general fund-supported, sum sufficient appropriation that would be used to pay any debt service associated with the issuance of these bonds and specify that the Department of Transportation (DOT) would not be able to expend the proceeds from the bonds authorized under this provision unless the state receives an award of federal moneys for the I-94 North-South corridor project.

Although the administration indicates that these bonds would be used as the state match for a potential federal "FASTLANE" ("INFRA") grant that would fund remaining work on the I-94 North-South corridor project, as drafted, any award of federal moneys for this project, in the 2017-19 biennium or beyond, could provide DOT with the authority to use these bond proceeds. For instance, if the state did not receive a "FASTLANE" grant, but instead received some amount of federal redistribution aid for this project, it is possible that the receipt of the additional aid could be interpreted as satisfying the criteria required to expend the bond proceeds.

[Bill Sections: 4, 7, 35, 36, and 60]

## **FISCAL EFFECT**

The following section of the paper examines the fiscal effect of the legislation and the Foxconn project. It begins with an analysis of the estimated state impact and concludes with a discussion of the potential impact on local governments.

### **REFUNDABLE TAX CREDITS**

The bill has four components related to refundable tax credits that are estimated to have state fiscal effects beginning in 2018-19. Two of the components are the new EITM zone credits related to the Foxconn incentive package. The third component is the expansion of the enterprise zone credit program to provide financial assistance to Fiserv, Inc., and the fourth component is an increase in the maximum number of enterprise zones that WEDC may designate.

#### ***EITM Zone Tax Credits***

The bill would create two refundable tax credits related to the Foxconn incentive package--a credit based on 17% of the company's EITM zone payroll, and a credit of up to 15% of the company's capital expenditures in the zone. The payroll credit would be paid over 15 years and the capital expenditure credit would be paid over seven years. Aggregate payments of the payroll credit could not exceed \$1.50 billion, and aggregate payments of the capital expenditure credit could not exceed \$1.35 billion. Because the credits would be refundable, they would be paid from a sum sufficient GPR appropriation created under the bill. The company would receive the full amount of credit, even if it has little or no Wisconsin income or franchise tax liability.

Based on our understanding of the proposed facility, it is believed that Foxconn would be able to claim the 7.5% manufacturing and agriculture credit (MAC) on income derived from its Wisconsin operations. Because of the MAC and the state's sales-based apportionment rules, it

appears likely that most of the proposed tax benefits would be refunded to Foxconn and not used to offset its state tax liability.

Staff at the Department of Administration have developed an estimated timeline for payments of the proposed tax credits using information provided by Foxconn and WEDC, and an economic impact analysis prepared by the consulting firm EY (formerly Ernst and Young). The estimated payments are shown in the following table.

**TABLE 1**  
**Estimated Payments of Refundable EITM Credits**  
**(Millions)**

<u>State Fiscal Year</u>	<u>EITM Zone Cap. Exp. Credit</u>	<u>EITM Zone Payroll Credit</u>	<u>Total</u>
2018-19	\$0.00	\$2.35	\$2.35
2019-20	192.86	23.81	216.67
2020-21	192.86	59.53	252.39
2021-22	192.86	95.25	288.11
2022-23	192.86	119.06	311.92
2023-24	192.86	119.06	311.92
2024-25	192.86	119.06	311.92
2025-26	192.86	119.06	311.92
2026-27	0.00	119.06	119.06
2027-28	0.00	119.06	119.06
2028-29	0.00	119.06	119.06
2029-30	0.00	119.06	119.06
2030-31	0.00	119.06	119.06
2031-32	0.00	119.06	119.06
2032-33	0.00	119.06	119.06
2033-34	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b>Total</b>	<b>\$1,350.00</b>	<b>\$1,490.65</b>	<b>\$2,840.65</b>

As shown in Table 1, it is estimated that payments of the capital expenditure credit will total \$192.9 million GPR annually in fiscal years 2019-20 through 2025-26. Aggregate payments are estimated at \$1.35 billion.

Payments of the payroll tax credit are estimated to range from \$2.4 million GPR in 2018-19 to \$119.1 million annually in fiscal years 2022-23 through 2032-33. The 15-year total is estimated to be \$1.49 billion.

These estimates assume that Foxconn's zone employment will increase from 1,040 positions in the latter part of calendar year 2017 to 13,000 positions by 2021, and then remain at that level. The average annual salary for these positions is estimated at \$53,875.

***Expanded Enterprise Zone Credits for Fiserv***

DOA estimates that payments of the expanded enterprise zone tax credit will total \$2 million annually in fiscal years 2019-20 through 2023-24, for a total of \$10 million. It is also anticipated that Fiserv will receive an additional \$500,000 annually over this period in capital investment credits under the current enterprise zone program.

***Increase in the Number of Enterprise Zones***

DOA estimates that WEDC would create five new enterprise zones, which would result in additional GPR expenditures of \$90 million over nine years, as shown in Table 2. The average tax benefit amount per zone is estimated to be \$18 million. It is unknown which businesses would receive these tax benefits.

**TABLE 2**

**Estimated Increased Enterprise Zone Expenditures under the Bill  
(Millions)**

<u>State Fiscal Year</u>	<u>Increased Enterprise Zone Credits</u>
2018-19	\$0.00
2019-20	13.50
2020-21	11.25
2021-22	11.25
2022-23	11.25
2023-24	11.25
2024-25	11.25
2025-26	11.25
2026-27	6.75
2027-28	2.25
2028-29	<u>0.00</u>
Total	\$90.00

***Total Refundable Tax Credits under the Bill***

Table 3 shows the total estimated payments of all of these tax credits for fiscal years 2018-19 through 2032-33. The aggregate 15-year total is \$2.9 billion.

**TABLE 3****Total Refundable Tax Credits Under SS AB 1  
(Millions)**

<u>State Fiscal Year</u>	<u>EITM Zone Cap. Exp. Credit</u>	<u>EITM Zone Payroll Credit</u>	<u>Fiserv EZ Credits</u>	<u>Increased Enterprise Zone Credits</u>	<u>Total</u>
2018-19	\$0.00	\$2.35	\$0.00	\$0.00	\$2.35
2019-20	192.86	23.81	2.00	13.50	232.17
2020-21	192.86	59.53	2.00	11.25	265.64
2021-22	192.86	95.25	2.00	11.25	301.36
2022-23	192.86	119.06	2.00	11.25	325.17
2023-24	192.86	119.06	2.00	11.25	325.17
2024-25	192.86	119.06	0.00	11.25	323.17
2025-26	192.86	119.06	0.00	11.25	323.17
2026-27	0.00	119.06	0.00	6.75	125.81
2027-28	0.00	119.06	0.00	2.25	121.31
2028-29	0.00	119.06	0.00	0.00	119.06
2029-30	0.00	119.06	0.00	0.00	119.06
2030-31	0.00	119.06	0.00	0.00	119.06
2031-32	0.00	119.06	0.00	0.00	119.06
2032-33	0.00	119.06	0.00	0.00	119.06
2033-34	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total	\$1,350.00	\$1,490.65	\$10.00	\$90.00	\$2,940.65

**SALES AND USE TAX EXEMPTION**

The bill would create a sales and use tax exemption for tangible personal property and landscaping and lawn maintenance services acquired solely for use in the construction or development of facilities located in an EITM zone if the capital expenditures for the construction or development of such facilities may be claimed as an EITM capital expenditure credit, as certified by WEDC. The Foxconn MOU indicates that the company will invest up to \$10 billion to construct fabrication facilities in Wisconsin. Based on estimated capital expenditures of \$10 billion for the Foxconn facility, the Department of Revenue estimates that the sales and use tax exemption would result in state tax savings of \$139 million for Foxconn and its contractors during the life of the EITM zone. However, since it is highly unlikely that Foxconn would locate in the state without the incentives provided under the bill, this amount should not be viewed as a state revenue loss.

**POTENTIAL INCREASED STATE TAXES ASSOCIATED WITH FOXCONN**

DOA staff have also prepared estimates of the additional employment, wages, and tax collections that might occur in Wisconsin as a result of the Foxconn project. As with the timeline for credit payments outlined above, these figures are based on information provided by Foxconn, WEDC, and the EY study. Although DOA's projections must be considered speculative, this office has reviewed them carefully, and based on the available information and underlying assumptions,

they appear to represent a reasonable approximation of the potential state benefits of the project. However, as described below, the use of alternative assumptions, particularly regarding the number of new jobs that would be filled by Wisconsin residents, would significantly affect the outcome of the analysis.

The estimates assume that the project will require an average annual employment of approximately 10,200 construction workers and equipment suppliers earning an average total compensation of approximately \$59,600 (including benefits) per year during the four-year construction period (from 2018 through 2021). Total income for these individuals is estimated at \$2.4 billion. In addition, it is assumed that nearly 6,000 indirect and induced jobs will be created during the construction period, with an average total compensation of \$48,900.

It is estimated that the additional construction-period jobs would generate increased state tax revenues (primarily income and sales taxes) equal to approximately 6.3% of the additional gross wages. The total increased state taxes associated with the construction period are estimated at \$186.9 million.

As noted, permanent staff at the Foxconn facility are estimated to increase from about 1,000 in the second half of 2017 to 13,000 beginning in calendar year 2021. The average annual wage for these employees is estimated at \$53,875, based on a headcount distribution, by job type, provided to EY by Foxconn and median wages for each occupation from the Economic Research Institute. Total ongoing payroll at the company is projected to be \$13.8 million for the remainder of this year and increase to approximately \$700 million annually beginning in 2021. State tax revenues associated with the additional employees and wages are estimated to increase from about \$900,000 this year to \$44 million annually beginning in 2021.

Indirect and induced jobs associated with the project are estimated to total 22,000 beginning in 2021, based on a multiplier of 2.7. Average annual wages for these individuals are estimated at approximately \$51,000. Total ongoing wages are estimated at \$1.12 billion annually, and related state taxes are estimated at \$71 million per year. Smaller impacts are estimated in calendar years 2017 through 2020 as the project ramps up.

Based on these figures, DOA projects that the cost of the refundable state tax credits under the bill will exceed the potential increased tax revenues until the last EITM payroll credit is paid in fiscal year 2032-33. As of the end of that year, the cumulative net cost of the incentive package is estimated at \$1.04 billion. Beginning in 2033-34, payments to the company would cease and increased state tax collections are estimated at \$115 million per year. DOA estimates that the project's break-even point would occur during the 2042-43 fiscal year. DOA's analysis for fiscal years 2017-18 through 2044-45 is shown in Table 4.

**TABLE 4****Break-Even Analysis for Foxconn Project (Millions)**

<u>Fiscal Year</u>	<u>State Payments*</u>	<u>Increased Taxes</u>	<u>Net Benefit (Cost)</u>	<u>Cumulative</u>
2017-18	-\$10.00	\$11.83	\$1.83	\$1.83
2018-19	-2.35	71.32	68.97	70.81
2019-20	-216.67	190.39	-26.27	44.53
2020-21	-252.39	156.44	-95.95	-51.42
2021-22	-288.11	118.84	-169.27	-220.69
2022-23	-311.92	115.04	-196.88	-417.57
2023-24	-311.92	115.00	-196.92	-614.49
2024-25	-311.92	115.00	-196.92	-811.41
2025-26	-311.92	115.00	-196.92	-1,008.33
2026-27	-119.06	115.00	-4.06	-1,012.40
2027-28	-119.06	115.00	-4.06	-1,016.46
2028-29	-119.06	115.00	-4.06	-1,020.52
2029-30	-119.06	115.00	-4.06	-1,024.59
2030-31	-119.06	115.00	-4.06	-1,028.65
2031-32	-119.06	115.00	-4.06	-1,032.71
2032-33	-119.06	115.00	-4.06	-1,036.78
2033-34	0.00	115.00	115.00	-921.78
2034-35	0.00	115.00	115.00	-806.78
2035-36	0.00	115.00	115.00	-691.78
2036-37	0.00	115.00	115.00	-576.78
2037-38	0.00	115.00	115.00	-461.78
2038-39	0.00	115.00	115.00	-346.78
2039-40	0.00	115.00	115.00	-231.78
2040-41	0.00	115.00	115.00	-116.78
2041-42	0.00	115.00	115.00	-1.78
2042-43	0.00	115.00	115.00	113.22
2043-44	0.00	115.00	115.00	228.22
2044-45	0.00	115.00	115.00	343.22

\*State payments include the refundable EITM credits shown in Table 1 plus an estimated \$10 million in grants to local governments paid by DOA in 2017-18.

Source: Department of Administration

Several points should be noted regarding DOA's analysis. First, the figures in Table 4 should be viewed as an approximate timeline of cash flows associated with the Foxconn project, assuming the project proceeds in accordance with the above assumptions. They should not be viewed as the

precise state fiscal effects of the bill. To this point, under the DOA analysis, it is assumed that the state will receive additional tax collections of \$83.15 million for the current biennium. At the end of August, 2017, DOR will report preliminary actual tax collections for 2016-17 and on October 15, 2017, DOA will release the state's annual fiscal report for 2016-17. In January, 2018, the Legislative Fiscal Bureau will inform the Legislature of any necessary revisions to 2017-19 tax collections estimates based upon actual data for 2016-17, collections for the first six months of 2017-18, and a review of national economic forecasts. Although the \$83.15 million may accrue due to the Foxconn project, it would be premature to increase 2017-19 figures by the \$83.15 million without a thorough review of all factors that might suggest a modification to current projections.

Second, any cash-flow analysis that covers a period of nearly 30 years must be considered highly speculative, especially for a manufacturing facility and equipment that may have a limited useful life. Technological advances and changes in Foxconn's market share, operating procedures, or product mix could significantly affect employment and wages at the proposed facility over time. Also, state law changes could affect the estimated amount of tax collections received from the additional economic activity, and any future state assistance that may be provided to Foxconn would affect the analysis.

In addition, investment analyses typically use a discounted cash flow methodology to account for the cost of capital. The DOA analysis expresses all amounts in current dollars and does not utilize a discount rate for future cash flows. Depending upon what discount rate is used, accounting for the cost of capital could push the break-even point for the project further into the future. On the other hand, the analysis did not assume any wage inflation, which would result in greater future cash flows to the state and a shorter break-even period.

DOA's analysis also assumed that all of the construction-period and ongoing jobs associated with the project would be filled by Wisconsin residents. However, the EY study notes that the job estimates for the project described above represent positions that would be located in this state but could be filled by residents or nonresidents. Since the facility would be located in the Southeastern part of the state, it is likely that some of the new positions would be filled by Illinois residents. Because Wisconsin has an income tax reciprocity agreement with Illinois, the wage income of Illinois residents who work in this state is taxed only by Illinois and not by Wisconsin. However, Wisconsin would likely receive some sales tax revenue from Illinois residents who commute to the facility on a regular basis. The basis of Wisconsin's annual payment to Illinois under the reciprocity agreement is a benchmark study of 1998 tax returns conducted by the University of Michigan. Absent a new benchmark study, if it is assumed that 10% of the projected new jobs would be filled by Illinois residents, the estimated pay-back period would be delayed by two years to 2044-45.

WEDC has retained the accounting and consulting firm of Baker Tilly Virchow Krause, LLP (Baker Tilly) to assist with the underwriting process and contract negotiations with Foxconn. Baker Tilly conducted an assessment of the assumptions and methodology used in a preliminary version of an EY analysis, and indicated that 40% to 50% of the construction-period and ongoing jobs associated with the project potentially could be filled by nonresidents. If it is assumed that the increased tax revenue amounts shown in Table 4 would be 40% lower to reflect this possibility, the break-even point would be delayed well beyond 2044-45. However, EY and the administration

believe that the 40% to 50% figure significantly overstates the number of nonresidents who would be working at the facility, both during the construction phase and as permanent employees. They cite U.S. Census data showing that 95% of the jobs in Racine County and 88% of the jobs in Kenosha County are filled by Wisconsin residents, and also point out that individuals tend to reside near their jobs. On balance, it appears that the 10% adjustment mentioned above is more appropriate. Baker Tilly is currently revising its analysis to incorporate feedback by the administration and EY.

There have been press accounts suggesting that employment at the proposed facility would be closer to 3,000 instead of 13,000 permanent positions. If this were the case, using the other assumptions outlined above, payments of the EITM payroll tax credit would be reduced from just under \$1.5 billion to approximately \$345 million over the 15-year life of the EITM zone, but the capital expenditure credit would still be estimated at \$1.35 billion. The estimated ongoing tax benefits from the project would decrease from \$115 million to \$27 million per year, and the break-even point would be well past 2044-45.

The above analysis was limited to the Foxconn project and does not include the impact of the bill's provisions to increase the number of enterprise zones that WEDC may designate and to provide financial assistance to Fiserv, Inc. As noted above, these provisions would result in estimated state expenditures totaling \$100 million over the nine-year period from 2019-20 through 2027-28.

Finally, the analysis is based on a number of estimates and assumptions regarding the scope of the project and future employment levels at Foxconn and other impacted businesses that cannot be confirmed at this time. The EY study, from which many of these estimates and assumptions are drawn, acknowledges that, "The analyses conducted in this report constitute neither an examination nor a compilation of prospective financial statements nor the application of agreed-upon procedures thereto in accordance with the attestation standards established by the American Institute of CPAs (AICPA). Accordingly, EY does not express an opinion on or offer any other assurances as to whether the analyses are presented in conformity with AICPA presentation guidelines or as to whether the underlying assumptions provide a reasonable basis for the analysis."

It should be noted that the analysis focuses only on the impacts of the Foxconn project on the state treasury, but does not account for other benefits to the state's economy and residents. For example, based on the assumptions outlined above, the capital expenditure credit and sales tax exemption would have a value of approximately \$1.5 billion, but would induce private investment of \$10 billion from Foxconn alone, for a leverage ratio of \$6.70 of private investment for each \$1.00 of public outlay. Likewise, the 17% payroll credit implies a leverage ratio of 5.9 to 1, just considering Foxconn's payroll. The leverage ratios are even higher if the indirect and induced jobs associated with the project are considered. Most state expenditures do not result in private investments of this nature. The project would also provide greater employment opportunities for the state's present and future workforce, and add a new sector to the state's manufacturing economy.

## **WEDC ADMINISTRATIVE COSTS**

According to WEDC, it would require three additional staff to administer the EITM zone tax credit program created under the bill. WEDC estimates the cost of the additional staff would be between \$251,000 and \$323,000 per year for salary and benefits. WEDC would not be provided additional monies for these positions under the bill and would have to reallocate monies that would otherwise be used for its existing economic development programs and activities.

## **PUBLIC SERVICE COMMISSION**

The review and approval of the proposed market-based public utility rates would cause the PSC to incur additional administrative expenses, but the PSC indicates that those expenses could be absorbed within existing budget authority. Further, due to the proposed exclusions of EITM zone projects from requirements to receive certificates of authority or certificates of public convenience and necessity, the PSC would not incur additional expenses related to the relocation of public utility property under those provisions.

## **NATURAL RESOURCES**

### ***Environmental Impact Statement***

The bill would specify that any permit or approval issued for a new manufacturing facility within an EITM zone would not be considered a major action for the purpose of the environmental impact statement (EIS) requirement under s. 1.11 (2)(c) of the statutes. Under current law, if DNR determines an EIS is required for a project or proposal that is seeking a license or permit, DNR under s. 23.40 of the statutes must provide the applicant an estimate of the cost of preparing the EIS. EIS fees are to equal the full cost to the Department of preparing the document, including authorized costs of any consultants hired for the evaluation. DNR may determine the process for payment of fees, and amounts received for EIS preparation are deposited to a program revenue (PR) continuing appropriation. (Under DNR administrative rules, persons with an action subject to an EIS, a consultant, other government agencies, or DNR may author an EIS in whole or in part. However, the Department is responsible for verifying the content of the document and detailing all relevant sources of information.)

Under current law, DNR, consultants, or permit applicants would incur costs if an EIS would be prepared. It cannot be determined at this time what costs related to preparation of an EIS would be foregone under the bill.

### ***Wetlands Permit Exemptions***

Under current law, DNR is to issue general or individual permits for discharges of dredged or fill material to wetlands in the state. General permits for discharges to wetlands mostly are limited to activities affecting not more than either two acres or 10,000 square feet (about 0.23 acre), depending on the nature of the activity. All other activities requiring a permit are subject to

individual permits. Currently, the statutes specify an application fee of \$500 for most wetlands general permits, while individual permit applicants must pay an application fee of \$800.

Also, under current law, activities under a general permit relating to development for industrial activity, among other purposes, and not affecting more than 10,000 square feet of wetlands, must pay a restoration surcharge at the time of application. The surcharge is to be established annually by DNR and is to be no more than 50% of the market price of purchasing equivalent credits from a mitigation bank. DNR has established restoration surcharges for general permits for industrial, commercial or residential development at \$200 for activities affecting no more than 0.1 acre of wetlands (\$700 total, including a permit) or \$300 for activities affecting more than 0.1 acre but not more than 10,000 square feet of wetlands (\$800 total). The revenues of the surcharge are deposited to a continuing appropriation receiving other compensatory mitigation payments under the state in-lieu fee mitigation program for the purpose of restoring or creating wetlands in the state.

Further, under current law, activities requiring an individual permit must mitigate the impacts of the activity by restoring, enhancing or creating other wetland areas to compensate for the impacts under the permitted activity. Mitigation under current law is to be completed at no less than 1.2 acres of restored, enhanced or created wetlands for every acre affected by a discharge. As of the most recent (2015-16) annual report for the Wisconsin Wetland Conservation Trust (WWCT), DNR reports mitigation credits are often purchased at a ratio of 1.45:1.

The bill would exempt manufacturing facilities in an EITM zone from wetlands general or individual permit requirements. Although the state would forego permit revenues under the bill provision relative to current law, the amount of revenues DNR would receive under current law cannot be estimated without further information regarding the size and location of the EITM zone and any manufacturing facility therein. However, it is assumed DNR would not need to allocate staff to conduct the sort of reviews normally undertaken for evaluating a wetlands permit. As indicated in DNR's fiscal note to the bill, any estimate of such staffing costs cannot be determined at this time.

It should also be noted the wetlands permit exemptions under the bill would require the manufacturing facility owner to complete wetland compensatory mitigation at a ratio of two acres of compensation or credits per acre of wetland adversely impacted. It cannot be determined at this time whether or how many wetland acres would be impacted by an EITM zone manufacturing facility, nor can it be estimated how many compensatory acres or credits would be required under bill provisions. If mitigation were to occur through DNR, credits would be purchased through the WWCT, which cost approximately \$60,000 per credit in major watersheds in southeast Wisconsin in 2016 and 2017. This would mean each acre of wetlands impacts in an EITM zone compensated through the WWCT would be estimated to generate approximately \$120,000 for the WWCT to fund wetlands restoration projects.

### ***Waterway Permit Exemptions***

The bill would create exemptions from the following activities affecting navigable streams

for activities related to the construction, operation or access of a new manufacturing facility in an EITM zone: (a) the deposit of material or placement of a structure upon the bed of any navigable stream beyond where a bulkhead line has been established, or where no bulkhead line has been established; (b) construction, placement, or maintenance of bridges or culverts in, on, or over navigable streams; (c) construction, dredging, or enlargement of an artificial water body that connects with an existing navigable stream, or is within 500 feet of the ordinary high-water mark of an existing navigable stream; (d) grading or removal of topsoil from the bank of a navigable stream where the area exposed would exceed 10,000 square feet; and (e) straightening or changing the course of navigable streams.

Under current law, the activities above would require a general or individual waterway permit, costing \$303 and \$603 respectively. Although the number of permits that may be required for an EITM zone manufacturing facility is indeterminate, DNR would be presumed to avoid allocating staffing time and costs toward permit review under the bill. However, certain permits also may be required under current law and the bill if DNR determines, due to conditions specific to a proposed site, that certain activities would cause environmental pollution or significant impacts or injuries to riparian or public rights. Although the state would be assumed to forego certain permit revenues under the bill provisions, the amount of revenues DNR would receive under current law and the bill cannot be estimated without further information regarding the size and location of the EITM zone and any manufacturing facility therein.

It also may be that any projects in an EITM zone eligible for an exemption would seek an exemption determination available under current law, by which a written request is made for DNR to determine whether a proposed activity meets statutory exemption requirements. If exemption determinations are requested for EITM zone projects, it cannot be determined what staffing may be allocated to such reviews. Any such departmental activities would be absorbed by available DNR budget authority.

## **TIF DISTRICT IN AN ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE**

The bill would create a number of exceptions to current law for a TIF district within an EITM zone that would have a fiscal effect on the TIF district and its overlying taxing jurisdictions. However, the local fiscal estimate regarding the EITM TIF district is indeterminate, as the location and project costs are currently unknown. According to DOR, the average tax increment value by municipality in 2017 is \$47 million, while TIF districts terminating in 2017 had an average life of 18 years. DOR estimates the TIF district within an EITM zone could have a multi-billion dollar increment value once fully developed.

Under current law, a city or village can only create a new TIF district if there is a finding that the equalized value of the proposed district plus the value increment of all existing districts does not exceed 12% of the total equalized value of property within the city or village. Under the bill, the equalized value of the EITM TIF district would be excluded from the calculation of a city or village's 12% limit. If the project site is located in a city or village that is currently near the 12% limit, this provision would allow the TIF district to be created and the project to proceed. The bill would also exclude the incremental value of the TIF district within an EITM zone from the

calculation of a city or village's 12% limit. As a result, the creation of a TIF district within an EITM zone would not prevent a city or village from creating other TIF districts in the city or village at a later date.

The bill specifies that a TIF district within an EITM zone must be an industrial site or mixed-use development. Under current law, a TIF district must be terminated 20 years after the district is created for districts created on or after October 1, 2004, that are established on the finding that 50% or more, by area, of the real property within the district is suitable for industrial sites or mixed-use development. The bill would extend the allowable life of a TIF district within an EITM zone and the period during which DOR may allocate positive tax increments from 20 years to 30 years. Extending the life of the district could result in 10 additional years of tax increments that could be applied to project costs. However, doing so would also extend the period during which the overlying taxing jurisdictions would forego taxes levied on the incremental value within the district.

Current law requires that public expenditures related to costs for projects located in a TIF district occur within the boundaries of the district or an area within one-half mile of the district's boundaries and within the city or village that created the district. The bill would allow a city or village creating a TIF district within an EITM zone to incur project costs for any territory that is located in the same county as the district if the expenditure benefits the district. This exception would allow project costs to be incurred that result from improvements benefitting the project that are some distance from the project site, but still within the same county. As an example, this exception could help fund improvements to water systems or wastewater treatment facilities located outside of the TIF district, but within the same county.

Finally, the bill would create flexibility when determining the creation date for a TIF district within an EITM zone. This flexibility would allow the city or village to select a creation date of January 1 of the year in which the resolution authorizing creation of the district is adopted, or January 1 of the following year, if a resolution is adopted between January 1 and December 1. (The bill would specify that if a resolution is adopted between December 2 and December 31, the creation date would be January 1 of the following year.) Selection of either creation date could benefit the district, depending on the progress of the project at the time the resolution is adopted. For example, establishing a creation date of January 1, 2017, could result in additional tax increments from any value increment that occurred within the district throughout 2017. Conversely, establishing a creation date of January 1, 2018, could be beneficial if the project is delayed.

For TIF districts created after October 1, 2004, cash grants made by the city or village to owners, lessees, or developers of land that is located within the TIF district can be considered eligible costs if the grant recipient has signed a development agreement with the city or village. A development agreement typically defines the responsibilities of both parties, sets the standards and conditions for the development, and includes provisions related to guarantees made by the developer to repay the city or village for costs incurred by the city or village if the development does not occur. According to DOA, it is not currently known whether a city or village would make a cash grant to Foxconn. Furthermore, the bill would not require the establishment of a development agreement between the city or village creating the TIF district and Foxconn.

However, DOA has indicated that to better define the obligations of both parties, a development agreement between the city or village and Foxconn could occur regardless of whether a cash grant is made.

## **DEPARTMENT OF ADMINISTRATION**

### ***Grants to Local Governments***

The bill creates a continuing GPR appropriation under DOA with funding of \$10.0 million GPR in 2017-18 for making one or more grants to local governmental units for costs associated with development occurring in an EITM zone, including costs related to infrastructure and public safety. The amount of grants that would be provided in 2017-18 is unknown at this time. However, under a continuing appropriation, the unencumbered balance of the appropriation that remains at the end of a fiscal year is retained and available to be expended from the appropriation in the following fiscal year. As such, if grants from the appropriation created under the bill totaled less than \$10.0 million GPR in 2017-18, remaining expenditure authority would be available for grants in 2018-19 and later years.

### ***Moral Obligation Pledge For Local Governmental Obligations***

The bill specifies that, recognizing its moral obligation to do so, the Legislature expresses its expectation and aspiration that, if ever called upon to do so, it would make an appropriation to pay up to 40% of the principal and interest of a local governmental unit's obligations, if all of the following apply: (a) the local governmental unit's obligation is issued to finance costs related to development occurring in or for the benefit of an EITM zone; and (b) the DOA Secretary approves the local governmental unit's obligation before it is issued.

A state moral obligation pledge for local governmental obligations can be viewed as a credit enhancement mechanism that could assist in the marketability of debt issued by a local governmental unit. Because of this pledge, debt not previously issued by a local governmental unit, or issued in larger amounts than before, may be issued at a lower interest rate due to the Legislature's moral obligation pledge to repay a portion of the outstanding principal and interest if the local governmental unit is unable to make such payments. The moral obligation pledge is not legally binding. Rather, it is a statement made by the current Legislature that it expects a future Legislature to, if called upon to do so, make an appropriation to assist in the repayment of outstanding debt issued by a local governmental unit.

The size of debt that could be issued by any local governmental units to finance costs related to development occurring in or for the benefit of an EITM zone is not currently known. Therefore, the potential state fiscal impact of the moral obligation pledge cannot currently be determined, and would depend on what obligations the DOA Secretary would approve to be covered by the pledge. As an example, if the total amount of debt issued by a local governmental unit covered by the pledge would be \$100 million, assuming an interest rate of 5% and a flat, 20-year repayment schedule, total principal and interest payments would equal \$160.5 million. Assuming that no revenues from the underlying project are available to service 40% of the debt, then the Legislature

could be called on to appropriate up to \$64.2 million for the repayment of 40% of principal and interest costs under the moral obligation pledge.

### ***Economic Development Liaison***

The bill provides \$183,500 GPR in 2017-18 and \$177,500 GPR in 2018-19 and 1.0 unclassified GPR position annually to DOA's supervision and management general program operations appropriation for economic development liaison activities. The administration indicates that the appropriation increase is based on the following budgeted expenses: \$120,000 annually for permanent position salary; \$47,500 annually for fringe benefits; \$10,000 annually for routine supplies and services; and \$6,000 in 2017-18 for one-time supplies and services. According to DOA, one-time expenses would include costs associated with purchase of a computer, cell phone, and furniture, in addition to any reconfiguration of space that the administration determines would be required for the position. It should be noted that, while the appropriation increase is based on a \$120,000 annual salary, the bill specifies that the economic development liaison position would be assigned to executive salary group 3, for which an annual salary ranges between \$70,429 and \$116,210 (as specified in the current state compensation plan). If the bill were amended to specify that the position would be assigned to executive salary group 4, the annual salary range for the position would be \$76,066 to \$125,528.

### **I-94 NORTH-SOUTH CORRIDOR PROJECT**

It is expected that, if partially issued in May, 2018, estimated debt service on the \$252,400,000 in contingent GPR-supported bonds that would be provided under the bill would increase by \$2,942,000 GPR in 2018-19. If fully issued, estimated general fund-supported debt service payments on these bonds would increase to \$8.91 million GPR in 2019-20, \$15.67 million GPR in 2020-21, and \$19.5 million in 2021-22, before plateauing at \$20.3 million in 2022-23 through 2037-38. Debt service on these bonds would begin to decline in 2038-39 and would be fully repaid by 2042. Total estimated debt service during this period would be equal to \$408.3 million. These estimates and the repayment schedule assume a 5% interest rate and 20-year bond maturities.

### **ESTIMATED GPR EXPENDITURES -- 2017-19 and 2019-21**

Table 5 displays the proposed general purpose revenue (GPR) expenditures under provisions of the bill for the 2017-19 and 2019-21 biennia.

**TABLE 5**

**Estimated 2017-19 and 2019-21 GPR Expenditures under SS AB 1  
(in Millions)**

	<u>2017-18</u>	<u>2018-19</u>	<u>2019-21</u>	<u>2019-21 Over 2018-19 Doubled</u>
EITM Zone Capital Expenditures Tax Credit	\$0.00	0.00	\$385.72	\$385.72
EITM Zone Payroll Tax Credit	0.00	2.35	83.34	78.64
Increased Enterprise Zone Tax Credits	0.00	0.00	24.75	24.75
Fiserv Enterprise Zone Tax Credits	0.00	0.00	4.00	4.00
Grants to Local Governments	10.00	0.00	0.00	0.00
Debt Service on I-94 North-South Corridor Project	0.00	2.94	24.58	18.70
Economic Development Liaison	<u>0.18</u>	<u>0.18</u>	<u>0.36</u>	<u>0.00</u>
Total	\$10.18	\$5.47	\$522.75	\$511.81
2017-19 Total	\$15.65			

As shown above, it is projected that general fund expenditures under the bill would be \$15.65 million in 2017-19 and \$522.75 million in the 2019-21 biennium. In reviewing the estimated general fund commitment of the bill for 2019-21, the table shows an expenditure amount of \$511.81 million over the 2018-19 base year doubled.

The administration's analysis shown in Table 4 assumes increased revenues of \$204.19 million for 2019-21 over the 2018-19 base year doubled. Under this assumption, the 2019-21 net commitment of the general fund for the provisions of the bill would be \$307.62 million (\$511.81 - \$204.19).

**DISCUSSION OF THE IMPACT ON LOCAL GOVERNMENTS**

*Counties, Municipalities, Technical Colleges, and School Districts*

Local governments (counties, municipalities, school districts, technical college districts, and special purpose districts) incur costs for operations and for capital. Operations include those costs that recur on a regular basis, while capital costs involve infrastructure and equipment with a multi-year life. Taxes, fees, and intergovernmental revenue are the primary funding sources for Wisconsin local governments' operations. While these funding sources can also be used for capital costs, local governments often borrow for those costs. General obligation bonds and notes are repaid through tax levies and are backed by the local government's "full faith and credit." The Wisconsin Constitution limits the amount of general obligation debt that each local government may incur to 5% of that local government's property tax base and specifies that the debt be retired within 20 years. Fees and other revenue sources can be used to support other debt, such as revenue bonds.

The Foxconn development would impose additional operating and capital costs on

Wisconsin local governments. Some of these costs will result from providing public services directly to the Foxconn facility in the EITM zone, and some costs will be indirect, resulting from providing services to people and property outside, but resulting from, the development. Foxconn would be subject to any fees charged by the municipality or other local governments for services, such as for utilities. However, public service costs funded through property taxes would not be recouped from Foxconn, since the taxes on property located inside the TIF district would be dedicated to repaying the TIF district's project costs. To the extent property in the TIF district causes those public service costs to increase, the taxes imposed to fund the services would be shifted to other property within that local government's jurisdiction, but outside the TIF district.

Indirect costs would result from other development related to the Foxconn project. That development would include business suppliers to Foxconn, housing for Foxconn employees, and businesses serving those employees, and the development would occur within the local governments hosting the EITM zone and in adjacent municipalities, counties, and states. The incremental public costs related to development may be small initially, but they can increase in dramatic steps as local governments are required to increase capacity, either by adding employees or infrastructure, such as roads, schools, and other buildings.

In Wisconsin, the property tax is the largest component of own-source revenue raised by local governments and would be used as the primary source for funding the costs described above. Counties, municipalities, technical college districts, and school districts are subject to fiscal controls designed to limit the annual change in property taxes.

For counties and municipalities, the control is a levy limitation that limits the year-to-year increase in the tax levy to the percentage increase in tax base due to new construction within the county or municipality. The percentage is calculated without regard to TIF district boundaries, so new construction occurring in TIF districts increases the allowable levy authority of the county and municipality containing the TIF district, even though the county and municipality are not imposing a tax on the TIF district's incremental value. As noted above, any increase in the county or municipal levy related to this additional levy authority would be borne by property outside the TIF district. Also, for development in the host community outside the TIF district and in adjacent municipalities, the levy limit would increase by the amount of this new construction, which would allow affected counties and municipalities the ability to fund costs related to that development. The levy limitation allows adjustments and exclusions for certain purposes to the allowable levy of each county or municipality. For example, the levy for debt service on long-term general obligation debt is excluded from the control. Finally, counties and municipalities may increase their levies beyond the level allowed under the levy limitation if the increase is approved at referendum.

For Wisconsin technical college districts, there is a revenue limit that applies to the sum of the tax levy and state property tax relief aid. No district can increase its revenue in any year by a percentage greater than its valuation factor. The valuation factor is the greater of zero, or the percentage change in the district's equalized value due to new construction, less improvements removed. For purposes of the revenue limit, tax levy excludes taxes levied for principal and interest on valid bonds and notes, other than noncapital notes. Districts may exceed their revenue limit if the increase is approved at referendum.

For school districts, revenue limits cover the sum of state general aid and the local levy, with certain exceptions. Each district's limit is calculated using a three-year rolling average of pupil enrollment. If additional pupils attend local school districts because of employment and housing growth attributable to the project, the three-year rolling average under revenue limits would increase as well. If school districts would need to build new schools, a bonding referendum would need to be passed in order for the debt levy on the bonds to be outside of revenue limits. The effect of any increase in revenue limits on a school district's levy would depend in part on the district's aid characteristics (pupil membership, aidable costs, and equalized value) as well as the changes in those factors compared to other districts in the state.

### ***County and District Sales Tax***

The Foxconn development would also impact local sales and use tax collections. Initially, during construction, the sale of building materials, supplies and equipment used solely in the construction of the Foxconn facility would be exempt from local sales and use taxes. However, local governments would likely realize increased sales and use tax revenues from the local economy during construction associated with the construction employment and over time associated with sale of additional taxable items resulting from the ancillary development of housing and other businesses indirectly related to the Foxconn development. The impact on local government sales and use taxes would vary depending on where the construction of the facility takes place. For example, Racine County does not impose the 0.5% county sales and use taxes, but the County is included in the Brewers stadium district, which imposes a 0.1% sales tax (expected to sunset by 2020 at the latest). Therefore, Foxconn could receive estimated tax savings of \$2.78 million associated with exemption of the Foxconn facility construction from the Brewers stadium tax. The stadium district could also benefit from any potential growth in local sales tax revenue while the tax is in place associated with any ancillary development related to the Foxconn facility. Conversely, while Kenosha County is not part of the Brewers stadium district, the County does impose a 0.5% county sales and use tax. Therefore, if the Foxconn facility is constructed in Kenosha County, Foxconn would receive tax savings estimated at \$13.9 million associated with the county sales tax exemption. Also, Kenosha County would receive any potential growth in county sales tax revenue over time associated with the ancillary development related to the Foxconn development. While the impact on Kenosha County sales tax revenues would be greater if the facility is located in Kenosha County, the County would likely receive some benefit associated with ancillary development if the facility were located in Racine County. Either county would also likely incur additional infrastructure, public safety, and other costs associated with the Foxconn facility and the related ancillary development.